

## REMARKS

This application has been carefully reviewed in light of the Office Action of November 30, 2004, wherein:

A. Claim 1 was rejected under 35 U.S.C. 112, first paragraph.

Turning now to the Office Action, the Examiner rejected Claim 1 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 is drawn to an isolated biologically pure culture of *Bacillus odysseyi* strain 34hs-1<sup>T</sup> under accession number NRRL B-30641<sup>T</sup>. The Examiner stated that it was not clear that the properties of *Bacillus odysseyi* strain 34hs-1<sup>T</sup> are known and publicly available or can be reproducibly isolated from nature without undue experimentation and because the claims require the use of a suitable deposit for patent purposes a deposit in a public repository is required. The Examiner further stated that without a publicly available deposit of the above *Bacillus odysseyi* strain 34hs-1<sup>T</sup>, one of ordinary skill in the art could not be assured of the ability to practice the invention as claimed. The Examiner also stated that Applicant's referral to the deposit of *Bacillus odysseyi* strain 34hs-1<sup>T</sup> on page 5 of the specification is an insufficient assurance that all required deposits have been made and all the conditions of 37 CFR 1.801-1.809 have been met. The Examiner further stated that if the deposit has been made under the provisions of the Budapest Treaty, filing of an affidavit or declaration by applicant or assignees or a statement by an attorney of record who has authority and control over the conditions of deposit over his or her signature and registration number stating that the deposit has been accepted by the international Depository Authority under the provisions of the Budapest Treaty and that all restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on this application, is required. The Examiner concluded that these requirements are necessary when deposits are made under the provisions of the Budapest Treaty as the Treaty leaves this specific matter to the discretion of each State, and that amendment of

the specification to recite the date of the deposit and the complete name and full street address of the depository is also required.

The *Bacillus odysseyi* strain 34hs-1<sup>T</sup> was deposited with the Agricultural Research Culture Collection (NRRL), located at 1815 N. University Street, Peoria, Illinois, 61604, U.S.A. The *Bacillus odysseyi* strain 34hs-1<sup>T</sup> was received by the NRRL on February 4, 2003, and was given an accession number by the International Depository Authority of NRRL B-30641. Attached hereto as Exhibit A is a true and correct copy of the certificate of deposit of the *Bacillus odysseyi* strain 34hs-1<sup>T</sup> with the Agricultural Research Culture Collection.

The deposit has been made to and received by the International Depository Authority under the provisions of the Budapest Treaty, and all restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on this application. Additionally, pursuant to the Examiner's request, the pertinent section of the specification has been amended to include the above language and the date of the deposit and the complete name and full street address of the depository. The *Bacillus odysseyi* strain 34hs-1<sup>T</sup> described in the specification is the same as that deposited in the NRRL International Depository Authority and given accession number NRRL B-30641.

The Applicant believes that with the above clarifications and statements, the application is now in allowable condition. Thus, the Applicant respectfully requests that the Examiner withdraw the rejection of Claim 1.

5 **Concluding Remarks:**

The Applicant respectfully submits that in light of the above comments and remarks, the Claim is now in allowable condition. The Applicant thus respectfully requests timely allowance of the pending Claim.

10 In the event the Examiner wishes to discuss any aspect of this response, or believes that a conversation with either Applicant or Applicant's representative would be beneficial the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

15 The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 50-2691. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed.  
20 The petition fee due in connection therewith may be charged to deposit account no. 50-2691.

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Respectfully submitted,  
TOPE-MCKAY & ASSOCIATES

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